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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/795,968	03/08/2004	Kurt A. Habecker	3600-198-02	8631

7590 09/26/2005

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EXAMINER

JENKINS, DANIEL J

ART UNIT	PAPER NUMBER
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1742

DATE MAILED: 09/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/795,968

Applicant(s)

HABECKER ET AL.

Examiner

Daniel J. Jenkins

Art Unit

1742

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 June 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 36-64 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 36-43 and 48-64 is/are rejected.
- 7) ☐ Claim(s) 44-47 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>6/30/05</u> . | 6) <input type="checkbox"/> Other: _____ |

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1. The Examiner has carefully considered Applicant's Response of 6/28/05. The Examiner does not find Applicant's arguments persuasive. In particular, Chang discloses wherein the material is a Group V-B element. This limited group containing both Ta and Nb. Although no specific examples are given for Nb powders, the limited selection within the art directs one of ordinary skill to Nb as well as Ta. Would Applicant argue that Chang's invention is limited to solely Ta? Chang clearly had in mind more than Ta, and given the knowledge in the art that Nb is also used for capacitors, including Nb in the materials encompassed by Chang is reasonable. Additionally, Applicant has argued that the Examiner has presented no showing that the powder of Chang would possess the post-formation characteristics as claimed. As Applicant is aware, the PTO has no means to perform such tests. Therefore, if a reasonable conclusion can be made that the cited powders would inherently possess these characteristics, the burden is upon the Applicant to provide a showing, not mere argument, to the contrary. The TD filed 6/28/05 overcomes the double-patenting rejections.

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claims 36-43, 48, 49, 50, 51, 53, 54, 55, 56, 58, 59, 60 and 61 are rejected under 35 U.S.C. 102(b) as being anticipated by Chang US Pat. No. 5,448,4447 (Chang). Chang discloses a flaked niobium powder at col. 4, lines 11-18.

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Chang further discloses wherein the niobium powder is nitrogen doped at amounts of 1850 to 2550 ppm (col. 5, lines 17-22).

Chang further discloses wherein the niobium powder is agglomerated (col. 4, lines 19-28).

The limitations of claims 36-42, 48, 49 which are directed to the characteristics of the powder post-sintering are not given weight to the claims.

Claims 53 and 54 are directed at the powder flow rate, which is inherently met by the flake morphology as disclosed by Chang unless a showing is provided to overcome this assertion.

Claims 55 and 56 are directed to the density of the powder, which the Examiner finds to be inherently met by a powder produced by a process of similar processing conditions unless a showing is provided to overcome this assertion.

Claim 58 is directed to an aspect ratio limitation which is inherently met by a flake morphology powder produced by similar processing conditions unless a showing is provided to overcome this assertion.

Claim 61 is found as a combination of limitations discussed above.

4. Claims 52 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chang. Chang discloses the invention substantially as claimed (see paragraph 2 above). However, Chang is silent as to the range of nitrogen doping,

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5. Claims 57 and 62-64 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chang.

Chang discloses the invention substantially as claimed (see paragraph 2 above).

However, Chang is silent as to the range of particle size, but discloses particle size of less than -40 mesh and gives an example of unagglomerated powder of 1 um (see Example 8).

It would have been obvious to one having ordinary skill in the art to select any portion of the range, including the claimed range, from the broader range disclosed in the prior art, because the prior art finds that said composition in the entire disclosed range has a suitable utility. Overlapping ranges have been held to be a prima facie case of obviousness, see MPEP 2144.05.

6. Claims 44-47 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The Examiner notes that claims 44-47, directed to BET limitations, is not met by the disclosure of Chang, which discloses BET of between about 0.25 and 0.55 (see Chang claim 31).

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel J. Jenkins whose telephone number is 571-272-1242. The examiner can normally be reached on M-TH6:30AM-5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Roy King can be reached on 571-272-1242. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Daniel J. Jenkins
Primary Examiner
Art Unit 1742

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